**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF TEXAS**
**DALLAS DIVISION**

JAMES JOSEPH JULUKE, JR.,
an individual,

Plaintiff,
v.

EAST LA HOME IMPROVEMENT LLC,
a Delaware Limited Liability Company,

Defendant.

Case No.: 3:16-cv-02521-D

**PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT AND MEMORANDUM OF LAW IN SUPPORT**

Plaintiff, JAMES JOSEPH JULUKE, JR., through his undersigned counsel, moves this Court to enter a Default against Defendant EAST LA HOME IMPROVEMENT LLC, in accordance with the provisions of Rule 55(b) of the Federal Rules of Civil Procedure, and in support thereof states the following:

***Motion and Incorporated Memorandum of Law***

This is an action for injunctive relief and attorney's fees and costs pursuant to Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181 et seq., ("Americans with Disabilities Act" or "ADA") and statutory damages pursuant to Chapter 121.004(b) of the Texas Human Rights Code. Plaintiff JAMES JOSEPH JULUKE, JR., (hereinafter "Plaintiff") filed his Complaint on August 31, 2016. [Dkt. No. 1]. Defendant EAST LA HOME IMPROVEMENT LLC, (hereinafter "Defendant") was properly served on September 2, 2016. [Dkt. No. 6]. However, as of this date, Defendant has failed to obtain counsel, cause counsel to enter a written appearance with the clerk of this court, and file a responsive pleading to Plaintiff's Complaint.

On November 21, 2016, the Court entered an Order directing the Plaintiff to move for entry of a default and for a default judgment. [Dkt. No. 15]. Pursuant to the provisions of Rule 55(b) of the Federal Rules of Civil Procedure, when a party against whom affirmative relief is sought has failed to plead or otherwise defend as provided by the Rules of Civil Procedure, such as the Defendant in this action, the Clerk shall enter a default against that party.

This Court has original jurisdiction over the action pursuant to 28 U.S.C. § 1331 and 1343 for Plaintiff's claims arising under 42 U.S.C. § 12181 based on allegations of Defendant's violations of Title III of the Americans with Disabilities Act and supplemental jurisdiction over Plaintiff's Texas State law claims pursuant to 28 U.S.C. § 1367(a).

On July 26, 1990, Congress enacted the Americans with Disabilities Act, and established January 26, 1992, as the date when all public accommodations had to comply therewith. See 42 U.S.C. § 12181 (or January 26, 1993, if defendant has 10 or fewer employees and gross receipts of $500,000 or less); see also 42 U.S.C. § 12134. Under either scenario, the Defendant's deadline for compliance has long since passed.

Pursuant to the mandates of 42 U.S.C. § 12134(a), on July 26, 1991, the Department of Justice, Office of the Attorney General, promulgated federal regulations to implement the requirements of the ADA. See 28 C.F.R. Part 36. Defendant is in violation of 42 U.S.C. § 12181 et seq., and 28 CFR 36.302 et seq., and is discriminating against Plaintiff. The discrimination is based on Defendant denying Plaintiff full and equal enjoyment of the goods, services, facilities, privileges, advantages, programs and accommodations as prohibited by 42 U.S.C. § 12181 and by failing to remove architectural barriers pursuant to 42 U.S.C. § 12182(b)(2)(A)(iv), where such removal is readily achievable. Specifically, Plaintiff, who is disabled, claims that the Property owner discriminates against him by failing to remedy inaccessible parking spaces, routes and curb ramps at its property. See Affidavit of James Joseph Juluke, Jr. at ¶¶ 2-5.

The Property is owned by Defendant and must be accessible to individuals with disabilities under the requirements of the ADA. Pursuant to 42 U.S.C. § 12181 and 28 CFR § 36.104, the land, buildings and facilities which are the subject of this action constitute a public accommodation covered by the ADA and which must be in compliance therewith. Despite the architectural barriers discussed above and as detailed in the Affidavit of Mr. Juluke, he intends to return to the Defendant's Property as a patron and also to determine whether the barriers to access have been remediated. See Affidavit of James Joseph Juluke, Jr. James Joseph Juluke, Jr. at ¶ 6.

Plaintiff has been obligated to retain the undersigned counsel for the filing and prosecution of this action, and is entitled to recover the reasonable attorneys' fees, costs and litigation expenses from Defendant pursuant to 42 U.S.C. § 12205. To date, Plaintiff's counsel has expended $7,310.00 in total fees, costs and litigation expenses in the prosecution of this action with regard to Defendant EAST LA HOME IMPROVEMENT LLC. See Affidavit of Louis I. Mussman at ¶ 9.

Pursuant to 42 U.S.C.§ 12188(a)(2), this Court is provided authority to grant Plaintiff's injunctive relief, including an Order to alter the subject facilities to make them readily accessible to and useable by individuals with disabilities to the extent required by the ADA, and closing the subject facilities until the requisite modifications are completed. Specifically, Plaintiff demands the following architectural barriers be remediated at the Property:

a. **Defect:** Parking space designated as accessible near City Nails improperly contains a ramp in its access aisle.

**Proposed Correction:** Regrade the parking space to provide a maximum slope of 1:48 in all directions within the spaces and its access aisles per ADAAG 502.4.

b. **Defect:** Parking spaces designated as accessible near Smiley Dental lack access aisles and signage.

**Proposed Correction:** Restripe spaces to provide proper access aisles per ADAAG 502.3 and add signage per ADAAG 502.6.

c. **Defect:** The ramp at the Wash & Dry improperly lacks handrails and edge protection.

**Proposed Correction:** Add handrails per ADAAG 405.8 and edge protection per ADAAG 405.9.

d. **Defect:** Parking space designated as accessible near Villa Clothing store improperly contains a ramp in its access aisle.

**Proposed Correction:** Regrade the parking space to provide a maximum slope of 1:48 in all directions within the spaces and its access aisles per ADAAG 502.4.

Additionally, by maintaining and/or failing to remove the four above referenced barriers to access, Defendant is liable for statutory damages under Chapter 121.004(b) of the Texas Human Rights Code in the amount of $300.00 for each of the violations discussed above for a total statutory damage amount of $1200.00 [$300.00 X 4 distinct barriers as listed above].

WHEREFORE, Plaintiff respectfully moves this court to enter a Default against the Defendant EAST LA HOME IMPROVEMENT LLC, grant the injunctive relief as noted herein and enter final judgment against Defendant in the amount of $1200.00 for statutory damages, $6,860.00 for reimbursement of Plaintiff's reasonable attorney's fees and $505.53 in reimbursement of Plaintiff's costs as the prevailing party.

Respectfully Submitted,

KU & MUSSMAN, P.A.

By: */s/ Louis I. Mussman* .

Louis I. Mussman
Attorney-in-charge
Florida Bar No. 597155
N.D. TX No. 597155FL
Ku & Mussman, P.A.
6001 NW 153rd Street, Suite 100
Miami Lakes, FL 33014
Tel: (305) 891-1322
Fax: (305) 891-4512
Louis@KuMussman.com

and

Seth P. Crosland
Local Counsel
Texas Bar No.: 24069551
Brandy Austin Law Firm, PLLC
2404 Roosevelt Drive
Arlington, Texas 76016
Tel: (817) 841-9906
Fax: (817) 484-0280
seth@brandyaustinlaw.com
*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 5th day of December, 2016, a true and correct copy of the foregoing has been furnished by U.S. Mail to: EAST LA HOME IMPROVEMENT LLC, c/o: registered agent, Kim L. Lawrence, 5720 LBJ Freeway, Suite 470, Dallas, Texas 75240 and Habibollah Elahinejad, Manager, PO Box 570734, Tarzana, CA 91357-0734.

By: */s/ Louis I. Mussman*
Louis I. Mussman